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SUPREME COURT

OF THE

UNITED STATES

No. 215

ARTHUR GOODWYN BILLINGS . . . . . Petitioner

vs.

KARL TRUESDELL, Major General . . . . Respondent
United States Army

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

LEE BOND
Of Counsel

ARTHUR GOODWYN BILLINGS
Petitioner

INDEX

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PETITION.

Arthur Goodwyn Billings, in propra persona, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Tenth Circuit, entered in the above cause on April 30, 1943, affirming the judgment of the United States District Court for the District of Kansas.

STATEMENT OF THE MATTER INVOLVED.

The petitioner registered under the Selective Training and Service Act of 1940 with the Ottawa County, Kansas, draft board, but stated on his registration card that he would never serve in the army. With his questionnaire he filed the form provided for conscientious objectors, stating therein his rea-

sons for opposing war and conscription. He was first put in class 1-B on account of defective eyesight, then in 1-H on account of his age, and finally (with the general reclassification which followed this country's official entrance into the war) in class 1-A. The law permitted the contesting of this last classification, and petitioner contested it. He was accorded a hearing at which he was allowed to set forth his reasons for opposing war and conscription. Petitioner stated, among other things, that, while he was an agnostic with regard to theology, he believed in the fundamental rightness and soundness of the teachings attributed to Jesus with regard to human conduct. He was told that his objection to war was "rational rather than religious" and was reminded that the draft law provided special treatment only for those who object to war "by reason of religious training and belief." The board decided not to change its classification. The board of appeals sustained the classification of the local board.

Petitioner, while determined never to serve in the army, had no desire to go to prison for violating the draft law if under the terms of that law he might not be found physically fit for the service in the army anyway. So petitioner, who was then teaching at the University of Texas in Austin, made inquiries of the army officers in charge of the state draft headquarters in that city as to whether he could take the final physical examination without becoming subject to military jurisdiction if he should pass the physical examination and refuse to report for induction. He was told by these draft officials that no one was subject to trial by court martial unless he had been "actually inducted" into the army, that one was not inducted until he subscribed to the oath of induction, that the induction ceremony in which the oath was administered did not come until after the final physical examination, and that, consequently, if petitioner reported for the final physical examination, passed it, and then refused to report for induction,

he would be subject to arrest and imprisonment by the civil authorities for violating the terms of the Selective Service Act. Petitioner made the same inqpiry of others and received the same answer. His own examination of the Act and of the pertinant Selective Service Regulations convinced him that the answer was correct.

In due time petitioner was ordered to report to his draft board at Minneapolis, Kansas, for transportation to Ft. Leavenworth for the final physical examination and, if he passed it, for induction. In the belief that the previously mentioned information given him by the state draft officials was correct, and in the hope that he might be found to be physically unacceptable to the army and hence be permitted to go on teaching at the University of Texas instead of being sent to prison—petitioner decided to report for the final physical examination and, if he passed it, to turn himself over to the appropriate civil authorities for arrest and imprisonment for refusal to report for induction. Petitioner's every act thereafter was in conformity with that decision.

Petitioner departed from Austin, Texas for Kansas by airplane, but had to give up his seat at Dallas on account of military priorities, so he proceeded to Kansas City by train. Since it was too late to go to Minneapolis, Kansas, petitioner phoned his local board to find out by what bus the group from his county was proceeding to Ft. Leavenworth and to reiterate that if he passed the physical examination he was going to turn himself over to the civil authorities for arrest and imprisonment. The secretary of the draft board told petitioner over the phone that he would be reported delinquent for his failure to report to Minneapolis. Believing that he probably would pass the physican examination, petitioner next phoned the Kansas City offices of the U. S. Attorney, the U. S. Marshal, and the F. B. I. and told them he was going to Ft. Leavenworth to take the final physical examination and that if he pass d, i.

he was going to refuse to report for induction, and inquired to whom he should turn himself over for arrest and imprisonment.

Then petitioner went to Victory Junction, Kansas, where he met the rest of the group from his county and proceeded with them to Ft. Leavenworth. He slept overnight on the reservation and reported for his final physical examination the next morning along with the rest of the group from his county. During the course of the physical examination he was asked if he thought he would make a good soldier and replied that he would never serve in the army. At the conclusion of the physical examination petitioner was told that he had been put in Class 1-B and that he should go back to the checking station. Since not all the members of Class 1-B were being inducted into the army and since petitioner had left his suitcase at the checking station, he did not know whether or not he had been found acceptable. His eyes having been dilated during his physical examination he was unable to read what was written on the papers that he carried. He therefore asked a boy in overalls at the checking station what the papers said. The boy replied that, according to them, petitioner was supposed to be fingerprinted. Petitioner inquired whether or not fingerprinting involved induction, stating that, if it did, he would refuse to submit to it and turn himself over to the civil authorities for arrest and imprisonment. The boy said that he did not know but would find out from his superior officer. Petitioner accompanied the boy to the office of Captain Milligan and Lieut. Nemec to whom he reiterated what he had just said to the boy, explaining that he wished to remain outside military jurisdiction. Captain Milligan said that since the army had jurisdiction over the territory of the reservation, petitioner had entered military jurisdiction as soon as he entered the reservation. Petitioner called attention to the fact that there was a provision of the draft law to the effect

that a person was not subject to trial by court martial unless he had been "actually inducted into the army," and stated that he, the petitioner, would refuse to be inducted. The captain replied that petitioner could be inducted simply by reading the oath of induction in his presence and that that was what would be done. At the suggestion of Lieut. Nemec petitioner was then put under guard to prevent him from turning himself over to the civil authorities before the oath of induction could be read to him. However, before the oath was read, Captain Milligan permitted petitioner to phone the U. S. Marshal and the U. S. Attorney at Topeka, Kansas to whom he explained his predicament and asked what he could do under the circumstances. He was advised that the thing to do in such a case was to get a good lawyer and apply for a writ of habeas corpus. At petitioner's request the names of several lawyers were mentioned. One of the lawyers mentioned was William D. Reilly. Petitioner phoned him immediately, explaining the situation and requesting him to apply for the writ of habeas corpus. Over the phone Mr. Reilly requested the army officers to stay reading of the oath of induction until the writ could be drawn. This they refused to do.

Shortly after petitioner had finished talking to his lawyer he was ordered to stand and raise his right hand. This petitioner refused to do. Then, as he sat there under guard to prevent him from turning himself over to the civil authorities, petitioner was read the oath of induction: "Do you, Arthur Goodwyn Billings, solemnly swear ..... ?". Petitioner replied, "I do not; I refuse to take this oath!" One of the officers then retorted, "That doesn't make any difference, you are in the army now." Then petitioner was ordered by Lieut. Nemec to submit to fingerprinting and, when he refused to do so, was ordered locked up for courtmartial on a charge of refusing to obey a direct order to submit to fingerprinting. Before petitioner was actually taken away to the guardhouse, however,

his attorney, Mr. Reilly, arrived with the application for a writ of habeas corpus for him to sign. Then petitioner, still in civilian clothes, was put in the guardhouse.

At the hearing in the District Court petitioner testified at length. The attorneys for the respondent accepted petitioner's testimony there as to the facts with the addition of one sentence to which, save for one word, petitioner had no objection.

The District Court discharged the writ. The "statement of facts" contained in the court's written opinion was on many points at variance with the testimony accepted by both petitioner and respondent, and its opinion as a whole, petitioner feels, gave evidence of a lack of judicial objectivity. The court questioned whether petitioner's refusal to be inducted into the army (or anything else which petitioner had done or had refused to do) constituted a violation of the Selective Service Act for which he might be punished by civil courts. It ruled that induction occurred "by operation of law" and that nothing that a person, having passed the final physical examination, could say or do could prevent his induction, so that in spite of his refusal to be inducted, petitioner had been actually inducted and was therfore subject to trial by court martial. Petitioner appealed.

The Circuit Court of Appeals affirmed the decision of the Ditsrict Court discharging the writ, although its ruling as to the oath of induction differed somewhat from that of the lower court. Comment with regard to the Circuit Court's decision appears elsewhere in the present petition.

Since August 13, 1942 or thereabouts petitioner has been held prisoner at the Post Guardhouse at Fort Leavenworth. In October, 1942 he was charged, as if he were a soldier, with the additional offense or refusing while a prisoner to load some scrap iron.

Petitioner is quite ready to bear such punishment as the civil courts may impose for his willful refusal to be inducted into or to serve in the army and, if freed from the bonds of the military authorities, would carry out his original intention of turning himself over to the civil authorities for arrest and imprisonment.

The questions presented are all stated in the Assignment of Errors.

REASONS FOR ALLOWANCE OF THE WRIT.

1. This case involves a number of important questions of Federal law which have not been—but should, in petitioner's opinion, be—settled by the Supreme Court. The importance of the Selective Training and Service Act of 1940 and of the executive regulations bearing upon this case needs no demonstration. The interpretation of the crucial provisions surrounding induction is in question. In the event of induction into the army a citizen ceases to enjoy the rights guaranteed by the 5th and 6th amendments to the Constitution of the United States. If induction were to occur simply "by operation of law" as the District Court, sustained by the Circuit Court of Appeals, contends, then Congress by its unilateral action could deprive some or all of the citizens of this country of their most essential rights under the Constitution by inducting them into the army, and convert this country into a totalitarian military state in which the citizens would be little better than slaves. In petitioner's opinion it was not the intent of the framers of the Constitution to give Congress such powers.

Taking into consideration the pertinent provisions of the Selective Service Regulations, (Part 633.1 to 633.9 inclusive)

and of the Mobilization Regulations (1-7, Sections 5 and 6, and paragraph 13e), the decision of the Circuit Court would appear to be in direct conflict also with the intent of Section 11 of the Selective Training and Service Act of 1940 as that intent is manifested in the Congressional Record (Volume 86, Part 10, P. 10895). The relevant provision of Section 11 of the said Act is that "No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted for the training and service prescribed under this Act . . ."

2. The Circuit Court of Appeals cites no precedent whatsoever for the decision in this case, and indeed there would appear to be no direct precedent involving exactly the same questions which this case involves. The following decisions, however, have some bearing on certain questions involved in this case:

VerMehren vs. Sirmyer
36th Federal Reporter (2d) P. 876
Stone vs. Christensen
36th Federal Supplement P. 739
United States vs. Powell
38th Federal Supplement P. 185
United States vs. Collura
(not yet reported)

Insofar as the above mentioned decisions have bearing upon the present case they would appear to conflict with the decision of the Circuit Court of Appeals, a review of which is being sought.

3. On at least one point the decision of the Circuit Court of Appeals would appear to be in conflict with the decision of the District Court which it affirms. The Circuit Court says (P. 6 of its decision):

> "Induction was completed when the oath was read to petitioner and he was told he was inducted into the army."

But the judge of the District Court (Pp. 14-16 of Transcript of Record) said:

> "Rules and regulations now in effect and in effect at the time the petitioner presented himself at Ft. Leavenworth carry no provision for the giving of an oath . . . . the giving of an oath and admonition that you are now in the army constitute mere formality."

4. In consideration of the fact (recorded in the evidence and admitted by the attorneys for the respondent) that BEFORE THE OATH OF INDUCTION WAS READ TO PETITIONER, HE ATTEMPTED TO TURN HIMSELF OVER TO THE CIVIL AUTHORITIES AND, after being put under guard, PHONED AN ATTORNEY TO INITIATE THE PRESENT HABEAS CORPUS ACTION—the decision of the Circuit Court to leave petitioner in the hands of the army is inconsistent with its own ruling that "Induction was completed when the oath was read to petitioner and he was told he was inducted into the army." It would appear to follow from this ruling that before the oath was read to petitioner and he was told that he was inducted into the army, he had not been "actually inducted" and hence was still subject to the jurisdiction of the civil authorities and that the army therefore had no right to put him under guard to prevent him from turning himself over to these authorities.

WHEREFORE, your petitioner respectfully prays that his petition be granted.

ARTHUR GOODWYN BILLINGS,
Petitioner in Propra Persona.

BRIEF IN SUPPORT OF PETITION

JURISDICTION.

The jurisdiction of this court to issue said writ is found in Sections 463-346-347, Title 28, U. S. C. A.

ASSIGNMENT OF ERRORS.

Petitioner contends that the Circuit Court of Appeals erred:

1. In asserting (P.2 of its decision) that petitioner believed that upon physical examination he "would be" rejected because of defective vision.

2. In asserting (Pp. 2 and 3) that petitioner inquired of anyone how he might comply with the order of his local draft board to report "for induction".

3. In asserting (P. 3) that it was with the consent of his local board that petitioner joined the group of selectees from his county at Victory Junction, Kansas.

4. In causing it to appear (P. 3) that it was not until after the oath of induction had been read to petitioner that he attempted to turn himself over to the civil authorities for arrest and imprisonment for refusal to report for induction and in failing to mention that the attempt fell through only because the military authorities put petitioner under guard to prevent him from turning himself over to the civil authorities.

5. In failing to mention that, after he had been put under guard but BEFORE THE OATH OF INDUCTION HAD BEEN READ TO HIM PETITIONER phoned the U. S. Marshal and the U. S. Attorney to find out how he could extricate himself from the hands of the military authorities and turn himself over to the civil authorities, and, at the suggestion of one of these civil officials, PHONED A LAWYER TO INI-

TIATE THE PRESENT HABEAS CORPUS ACTION.

6. In asserting (P.6) that petitioner actually did report "for induction".

7. In ruling by inference that the military authorities had not exceeded their rights when, before the oath of induction had even been read to petitioner, they put him under guard to prevent him from leaving the military reservation and from turning himself over to the civil authorities for arrest and imprisonment (for refusal to report for induction).

8. In ruling by inference that it was not even a violation of the Selective Service Act for petitioner to refuse to be inducted into the army.

9. In ruling (P. 6) that induction was completed when the oath was read to petitioner and he was told that he was inducted into the army.

10. In ruling by inference (P. 6) that the military authorities may by their unilateral action seize a man still in civil jurisdiction who refuses to be inducted into the army, and drag him across the induction boundary into military jurisdiction, that they may by their unilateral action deprive a citizen of his rights under the 5th and 6th amendments to the Federal Constitution in spite of anything that the citizen may do or say.

11. In failing to rule that to induct petitioner into the army (except in punishment of crime) would be to subject him to involuntary servitude in violation of his rights under the 13th amendment.

12. In affirming the decision of the District Court that the military authorities had jurisdiction over petitioner, and that he was subject to trial before a court martial.

13. In sustaining the decision of the United States District Court that petitioner had been inducted into the United States Army.

ARGUMENT.

Since the relevant facts of the case have been summarized in the "Statement of the Matter Involved" it would be superfluous here to correct the first four errors mentioned in the Assignment of Errors, all of which errors could, in petitioner's opinion, be proven by citations from the record of the hearing in the District Court. These citations are, unfortunately, too lengthy to include in the present brief. So petitioner will begin with the fifth item in the assignment of errors.

With Regard to the Fifth Assignment of Error:

A very important fact was omitted from the Circuit Court's account of the facts, namely, that before the oath of induction was read to him, petitioner, who had already been put under guard to prevent him from turning himself over to the civil authorities, phoned his attorney to apply for the writ of habeas corpus under consideration here. This fact appears in the record of the hearing, as follows (Pp. 29-31):

A. . . . . These gentlemen told me that they would order, just read the oath to me, and that would definitely make me a soldier in the army whether or not I swore to it, but before they did that they did allow me to phone the District Attorney. I said, "Is there anything I can do?" He said, "Well, the thing to do in a case like that is to try and get a writ of habeas corpus," and, he said, "Get a good lawyer."

Q. So you got Bill Reilly?

A. I told him I didn't know offhand the names of any federal lawyers in Leavenworth.

Q. They are all federal lawyers here.

A. Well, are they? I didn't know that, and I asked him to mention one and he said well, he couldn't recommend anyone, "That would be unethical." I said, "Will you please mention the names of several?" He mentioned four names and Mr. Reilly's was the first so I called Mr. Reilly and Mr. Reilly asked if they couldn't stay reading this order or oath to me for twenty-four hours until this writ could be drawn, and they said

nothing doing, they were going to read it right away.

Q. This army is in sort of a hurry apparently?

A. (continuing) And so about as soon as I hung up the receiver there they took me over to some other offices, an officer, and talked to him and then took me back again and then Lieut. Nemec got out this oath and he ordered me to stand up and I said I refuse to stand up. I sat there. He said, "I want you to raise your right hand," and I refused to raise my right hand, and then he read this oath, "Do you solemnly swear, and so on and so on." I said, "I do not. I refuse to take this oath." He said, "That doesn't make any difference, you are in the army now." . . .

This fact assumes considerable importance in view of the ruling of the Circuit Court as to when induction is completed.

With Regard to the Sixth Assignment of Error:

The very fact that petitioner took action to start this habeas corpus proceeding before the oath of induction was read to him refutes the assertion of the Circuit Court (P. 6) that petitioner reported "for induction". Suppose, reasoning by anology, that petitioner had been ordered to report for vaccination and, happening to be near the appointed building on the appointed day, dropped in to make an inquiry and to announce that he was refusing to report for vaccination or to be vaccinated. It would be ridiculous to say that he had fully complied with the terms of the order to report for vaccination and that he had actually reported for vaccination. Likewise in the present case, petitioner did not report for induction and moreover, did not at any time contemplate reporting for induction. The Collura case, cited on p. 16 has an important bearing on this point.

With Regard to the Seventh Assignment of Error.

The military authorities exceeded their rights when before the oath of induction had even been read to petitioner they put him under guard to prevent him from turning himself over to the civil authorities for arrest and imprisonment

for refusal to report for induction. Section 11 of the Selective Training and Service Act of 1940 provides that:

> "No person shall be tried by any military or naval court martial in any case arising under this act unless such person has been actually inducted for the training and service prescribed under this Act . . ."

It would appear to follow from this that up until a person has been "actually inducted" he is subject to the jurisdiction of the civil courts. Now, according to the reasoning of the Circuit Court (P. 6 of its opinion):

> "Induction was completed when the oath was read to petitioner and he was told he was inducted into the army."

But it would appear to follow even from the court's own reasoning that induction had not been completed, that petitioner had not been actually inducted, before the oath was read to him and he was told he was inducted into the army. Thus the petitioner not having been actually inducted into the army, was still under the jurisdiction of the civil authorities at the time he was put under guard by the army to prevent him from turning himself over to them. Thus the army authorities exceeded their rights when they put petitioner under guard to prevent him from turning himself over to the civil authorities for arrest and imprisonment for refusal to report for induction.

With Regard to the Eighth Assignment of Error:

It was a violation of the Selective Service Act of 1940 punishable in the civil courts for petitioner to refuse to be inducted into the army. The mere fact that induction under the law becomes compulsory at a certain point does not mean that refusal to be inducted into or to serve in the army would not be a violation of the law. The preceding steps,—registration, filing of questionnaire, and so on, are also compulsory and refusal to take any of these steps is unquestionably a vio-

lation of the law punishable in the civil courts by fine and imprisonment. Likewise with the crucial step of induction. Petitioner feels that refusal to be inducted into the army is as flagrant a violation of the Selective Service Act as refusal to pay taxes would be of the tax laws, and that having violated the Selective Service Act in this manner he should be turned over to the civil authorities for arrest and imprisonment.

With Regard to the Ninth Assignment of Error:

Induction was not completed when petitioner was read the oath and was told that he was inducted into the army. Mobilization regulation 1-7, Par. 13c, prescribes an induction ceremony "in which the men are administered the oath". Surely no oath can be said to be properly administered if the person to whom it is read refuses to take the oath. If it had been intended that a person refusing to be inducted or to take the oath of induction would be inducted anyway this would surely have been stated explicitly in the regulation. The court cites a vague provision of the regulations to the effect that a person refusing to take the oath "will be informed that this action does not alter in any respect his obligation to the United States." The very same information could be given to a man who refused to pay his federal taxes. Refusing to pay his taxes would not alter his obligation to pay them and he would therefore be subject to such punishment as the courts might impose for his violation of the law.

With Regard to the Tenth Assignment of Error:

The army authorities have no right to seize a person who is in civil jurisdiction where he enjoys the protection of the Fifth and Sixth Amendments and to drag him, in spite of his refusal to go, across the induction boundary into military jurisdiction where he is deprived of his rights under these amendments. Congress could not constitutionally have conferred

such a power on the military authorities even if it had wanted to. It was certainly not the intent of the framers of the Constitution to give Congress the power by its unilateral act to induct some or all of the citizens of the United States into the army "by operation of law", and thereby deprive them of the protection of the Bill of Rights, for to give Congress such a power would mean to give it the power to make a mockery of the entire Constitution and to make this government a military tyranny under which the citizens would enjoy no more rights than slaves.

With Regard to the Eleventh Assignment of Error:

Petitioner, confronted with the alternative of either doing what the draft law would require of him, or of being subjected to involuntary servitude in prison, as punishment for the "crime" of refusing to do what the draft law would require of him, has demonstrated by his choice of the latter that what the draft law requires would be for him involuntary servitude still more reprehensible than involuntary servitude in prison. It follows that it would be a violation of petitioner's rights under the Thirteenth Amendment to induct him into the army except in punishment of crime.

With Regard to the Twelfth and Thirteenth Assignments of Error:

If petitioner's contention is correct on any one of the above argued points, it would appear to follow logically that the Circuit Court of Appeals erred in affirming the decision of the District Court and that the application for a writ of certiorari is thoroughly warranted.

In the case of VerMehren v. Sirmyer, 36th Federal Reporter, (2d) page 876, the facts are that petitioner registered for the draft on June 15th, 1917. He claimed exemption which was not allowed, and was finally ordered up for physical

examination. He was never notified of the result of the physical examination,—at least the notice never reached him,—and they were not the notices required by the regulations. Petitioner failed to appear for entrainment. Charges were preferred against him before a general court martial and in October, 1918, he was found guilty of desertion, was sentenced to be dishonorably discharged and confined at hard labor for thirty years. While waiting to be transported to his place of confinement he escaped from the guard, and in 1929 voluntarily surrendered himself to the commanding officer at Fort DesMoines, Iowa, and immediately filed a petition for writ of habeas corpus. The writ was dismissed and appeal taken to the Circuit Court of Appeals of the Eighth Circuit. In the opinion of the court is the following at pages 881-882.

"The induction of a civilian into military service is a grave step, fraught with grave consequences. It means, among other things, that he is subject to military law instead of to the ordinary common and statutory law. A new status is taken on; he becomes a soldier; new responsibilities are assumed; failure to strictly meet those responsibilities is followed by extreme punishment. All this is quite right and necessary, and meets no criticism at our hands. But what we emphasize is the necessity that all the steps prescribed by statute, and by regulations having the force of law, shall be strictly taken before it can be held that a person has been lawfully inducted into the military service. In the case at bar those steps were not taken.

"We therefore hold that petitioner was never lawfully inducted into the military service; that the court-martial had no jurisdiction to try him as a deserter; that its judgment was void; that the District Court erred in not granting the writ of habeas corpus and discharging the petitioner. The order of the District Court is accordingly reversed, with directions to grant the writ of habeas corpus and discharge the petitioner."

VerMehren v. Sirmyer
36 F. (2d) 876-881

Petitioner contends that for refusal to report for induction, he is subject to trial and imprisonment not by the military, but by the civil authorities. The jurisdiction of the civil authorities in a case strikingly similar to the present one was sustained by the United States District Court for the Southern District of New York in a decision rendered in March of this year. The case was that of the United States vs. John Angelo Collura, which has not been reported.

Collura appeared at the Induction Station and stated that he was not reporting for induction unless the Army guaranteed that he would not be given any vaccinations or serums of any kind. The War Department refused to give such a guarantee and Collura then refused to submit to the final physical examination or to induction. Jurisdiction was assumed by the CIVIL authorities who charged Collura with refusal to report for induction. Collura, seeking release from the civil authorities, stated that he had reported for induction and would have submitted to induction if the Army had given the guarantee he asked. The court however sustained the claim of the civil authorities to jurisdiction, holding that while Collura HAD REPORTED AT THE INDUCTION STATION HE HAD NOT REPORTED FOR INDUCTION.

Now if even the CONDITIONAL refusal of Collura to submit to induction was punishable in the civil court, then your petitioner's UNCONDITIONAL refusal to submit to induction ought surely to be. Thus the recision in the Collura case lends strong support to petitioner's contention that the Circuit Court of Appeals erred in its decision in the present case.

Although the fact that your petitioner is earnestly opposed to war and conscription has been manifested both by his statement at the habeas corpus hearing and by his actions

(e. g. refusing to be inducted into or to serve in the army and refusing, even as a prisoner, to load scrap iron)—conscientious objection "by reason of religious training and belief" was not presented by him as a legal ground for granting his petition for a writ of habeas corpus. The legal grounds which he d'd present are, he is convinced, more than sufficient to warrant his release from the hands of the military authorities into the hands of the civil authorities. Moreover your petitioner was not, until recently, aware that a court might consider conscientious objection (of the type specified in the law) as a ground for the issuance of a writ of habeas corpus. He had presumed that the classification of the draft authorities was not subject to review in the court.

However, in the recent case of United States ex. rel. Phillips vs. Col. Downer (135 F 2d 521), a man holding ethical and humanitarian views strikingly similar to those of your petitioner, was released from the hands of the military authorities on the ground that he was, within the meaning of the law, a conscientious objector, "by reason of religious training and belief." Reversing the order of the District Court to quash the writ of habeas corpus, the Circuit Court of Appeals ruled that it was an error of law to deny Phillips classification as a conscientious objector.

Subsequent to the time when Phillips reported for the final pre-induction physical examination the facts in his case appear to differ from those in your petitioner's case in the following respect: Phillips was found physically fit for combattant service, whereas your petitioner was found physically fit only for non-combattant service; Phillips reported for and consented to submit to induction whereas your petitioner attempted to turn himself over to the civil authorities for arrest and imprisonment for refusal to report for induction and, after being put under guard, refused to submit to induction; Phillips consented to obey orders given to him as a soldier,

whereas your petitioner refused to obey any order given to him as if he were a soldier, even the trifling order to submit to fingerprinting, and refused to obey an order given to him as a prisoner to load some scrapiron. In these respects it would appear that the evidence of conscientious objection is more conclusive in your petitioner's case than in the case of Phillips.

Yet under the ruling of the Circuit Court in the Bowles case (3 Cir 131 F 2d 818) it appears that if Phillips had refused to report for or submit to induction the court might have refused even to consider the question of whether or not he was a conscientious objector within the meaning of the law. This ruling, seems to your petitioner, unreasonable, for it would appear to require that, before a man's claim to conscientious objection could ever be heard by the court, the objector must first prove to the court that his objection has not been strong enough or of such a nature as to cause him to refuse to comply with the law.

So much for the question of whether or not the court could consider a claim to conscientious objection of the type specified in the law as an additional legal ground for the issuance of a writ of habeas corpus in the present case. Assuming that the courts could consider it, there is considerable evidence in the record of your petitioner's actions and of his testimony which might be presented in support of such a claim.

The law provides special treatment only for those conscientious objectors who are opposed to war "by reason of religious training and belief." Interpreting the words quoted differently, honest men fully familiar with the background and convictions of your petitioner might differ on the question of whether or not he should be put in this category. Like most of the other members of the humanist wing of the Uni-

tarian church your petitioner is an agnostic. No organization to which he belongs has prescribed the stand which he has taken. He has taken it of his own accord. At the hearing before his draft board he was told that his objection to war and conscription was "rational rather than religious," and if the word "religious" is narrowly interpreted, that is true.

However if the word "religious" is interpreted broadly, as it was in the case of United States v. Kauten (2 Cir. 133 F 2d 703) your petitioner would contend that his objection to war and conscription is both rational and religious. In the Kauten case (at p. 708) the court found the language of the law on this point to refer to a belief "finding expression in a conscience which categorically requires the believer to disregard elementary self-interest and to accept martyrdom in preference to transgression of its tenet."

It should be fairly evident that your petitioner did disregard elementary self-interest and put himself in for severe punishment and sanctimonious vituperation when he refused to submit to induction, refused to obey orders given to him as if he were a soldier, and refused even as a prsioner to load scrapiron. He would have run no great risk by going into the army, for he had been found physically fit only for non-combattant service. Moreover he was given to understand by the officers who interviewed him at the guardhouse that, in view of his exceptional educational qualifications, he would probably be an officer in a very short time, if he would consent to serve in the army. These facts are recorded in the testimony of the hearing. For a cynic or for one not conscientiously opposed to war the easy way would obviously have been to go into the army, but for your petitioner, that way was out of the question, simply unthinkable.

Your petitioner would submit that his refusal to take the course which self-interest indicated, bears witness to the

conscientiousness of his objection to what he was ordered to do.

Further evidence as to the exact nature of your petitioner's conscientious objection to war and conscription is to be found in the following excerpt from his testimony at the habeas corpus hearing:

F. "I believe in the common sense of Christianity. I believe that the rules that attributed to Christ are the best rules. I am firmly convinced that they are the best rules of human conduct. But I have been very doubtful, I do not believe, frankly, that Christ was divine. But that hasn't shaken my belief in these principles, which stand on their own feet, I think." (P 14 of the typewritten transcript of the hearing in the District Court.)

"Ghandi, I think, has the right idea. He tells the Indian people: The British have wronged you, that is true, but you must not hate them. Recognize that they are misguided and in your actions toward them, don't act as if you hated them. Just refuse to cooperate. (op. cit. P 19.)

"Sir I don't think that it is a question of submitting and becoming slaves to these countries. I believe that they should be resisted, but without hatred. I am resisting what I regard as a fascist institution in this country, the army — by similar methods by refusing to cooperate with them. They may ultimately sentence me to a firing squad. But they can't go on with that forever. They can't put all the people in a country in prison. That is why if peaceful resistance were really tried, it would work." (op cit. p. 20)

"I believe that there are limits beyond which no government, even a democracy, has the right to go in infringing upon the rights of the individual . . . No government has the right to make him a slave, to make him commit murder. That is what the government is ordering me to do now, to go out and shoot people, or since I would be just a non-combattant, to serve as an accomplice in the murder of people whom I have never even seen, whom if I met them on the street I might like just as well as many of the people of this country." (op. cit. p 21).

These excerpts from the testimony of your petitioner together with the record of his actions should, he feels give the court a fair idea of the nature and intensity of his opposition to war and conscription. Although your petitioner will never consent to serve in the army, he would like nothing better, particularly in these troubled times, than to serve humanity in general, and his country in particular, in a manner consistent with his convictions, and he hopes that ~~if he is finally sent to~~ at least in prison, the Government will find it possible to put to some use his rather good education and his knowledge of foreign languages.

It is of course for the court to decide whether or not to consider the petitioner's objection to war and conscription as an additional legal ground for granting his petition. For his part, your petitioner remains convinced that the legal grounds presented at the initiation of the habeas corpus proceeding are more than sufficient to warrant his release from the hands of the military authorities into the hands of the civil authorities.

I would respectfully request that my petition for a writ of certiorari be granted.

ARTHUR GOODWYN BILLINGS,
Petitioner